

REMARKS

In view of the following remarks, Applicants respectfully request reconsideration and allowance of the subject application. The Applicant acknowledges that the Office issued the Office action in response to the RCE filed 10/21/2005. This Response is believed to be fully responsive to all issues raised in the Office action mailed 1/06/2006. Claims 1-14, 16, 18-24, and 26-52 remain pending in this application. Claims 1-2, 4-5, and 9-13 are amended herein. No claims are canceled herein. No new claims are added herein.

The Applicants note the Office's acknowledgement of the Applicants' claim for foreign priority under 35 U.S.C. §119(a)-(d). The certified copy of the foreign application relied upon has not yet been submitted, but Applicants acknowledge that the certified copy is to be filed before a patent resulting from the present application is granted, and preferably before payment of an issue fee in this matter. (See 37 C.F.R. §1.55(a)(2)).

Claim Rejections – 35 USC §102

Claims 1, 2, 5-8, 10, and 12 are rejected under 35 U.S.C. §102(e) as being purportedly anticipated by U.S. Patent No. 6,505,201 to Haitsuka et al. ("Haitsuka"). The Applicants traverse the rejection but have amended several of the claims to expedite allowance.

Haitsuka discloses an apparatus for monitoring individual Internet usage, particularly for the purpose of targeting advertisements to the user. Haitsuka, abstract. A client monitoring application monitors (1) URLs entered into the browser's address bar, (2) the stream of URLs transmitted by the browser, or (3) information in displayed web pages are obtained by the client monitoring application. Id; see also Haitsuka, col. 8, lines 22-29. As such, the Haitsuka reference is directed almost solely to learning where the user is surfing and selecting appropriate advertisements to direct to the user based on his or her surfing patterns. Other monitored information disclosed in Haitsuka

includes geographic data (i.e., the user's location) and personal profile information (i.e., age, sex, marriage status, home address, and personal interests. Haitsuka, col. 6, lines 1–12. Importantly, Haitsuka makes no disclosure or suggestion of monitoring to obtain performance data of a data access system.

Claim 1, as amended, recites in part "monitoring a network browser . . . to obtain performance data of the data access system, the performance data including performance metrics of a data transfer operation in the data access system". The Office points to various sections of Haitsuka as purportedly disclosing the recited feature. However, none of those sections discloses or suggests monitoring to obtain performance data, much less performance metrics of a data transfer. Particularly, Haitsuka, col. 8, lines 16–30 identifies three very specific (previously listed) ways in which the client monitoring application 110 can obtain information about the user's use of the browser (i.e., URL's visited or referenced by web sites visited by the user), and none of these ways relate to performance metrics. Therefore, Haitsuka only monitors where the user is surfing, not the performance of data transfers associated with such surfing.

Furthermore, claim 1 also recites "receiving the data indicative of the performance data transmitted from the monitoring agent; collecting a quantity of the data received; summarizing the quantity of the data collected to produce summarized performance data; and storing the summarized performance data into a database". The Office points to various sections of Haitsuka, including col. 6, lines 1–27 and lines 44–64, as purportedly disclosing these recited features. However, these sections do not describe collecting a quantity of the performance-indicative data received from the monitoring agent or summarizing the quantity of performance-indicative data. The Applicants respectfully point out that none of the three locations in which Haitsuka discussed summarizing relate to performance-related data. Haitsuka describes receiving feedback information pertaining to "the type of network data the user requests and accesses" (Haitsuka, col. 6, lines 24–26) – summarization of performance data or

performance metrics is not described. In another section, Haitsuka only describes summarizing user feedback to the client monitoring application and feedback pertaining to browser application requests and accesses to data with the web server (Haitsuka, col. 6, line 56 to col. 7, line 4) – again, summarization of performance data or performance metrics is not described. As such, no receipt, collection, summarization, and storing of performance-related data is disclosed or suggested in Haitsuka.

The Applicants further stress the lack of performance data and performance metrics of a data transfer in Haitsuka by pointing out that Haitsuka selects targeted advertisements to be sent to a particular user based on: “the individual’s geographic location; the individual’s interactive data; the individual’s network usage data; the individual’s personal profile information; the scheduling requirements of the data to be sent [to the user]; and the demographic requirements of the data to be set [to the user].” Haitsuka, col. 4, lines 4–9. None of the description in Haitsuka discloses or even suggests that such information or any other monitored information is performance related.

Accordingly, Haitsuka fails to disclose or suggest all of the features recited in claim 1, and thus, fails to anticipate or make obvious the invention of claim 1.

Claim 2 depends from claim 1, which is believed allowable. Accordingly, claim 2 is also believed allowable for at least the same reasons as claim 1. Furthermore, claim 2 recites “wherein the quantity of data selected represents performance of the data access system for a specified time interval”. The Office points to the periodic updating of personal profile information described in Haitsuka, col. 6, lines 1–12, as purportedly disclosing this recited feature. However, as previously discussed, Haitsuka fails to describe or suggest that the personal profile information includes performance data or performance metrics, and thus does not disclose or suggest the recited feature. Accordingly, for at least the foregoing reasons, Haitsuka fails to anticipate or make obvious the invention of claim 2. Allowance of claim 2 is respectfully requested.

Claims 5–6 depend from claim 1, which is believed allowable. Accordingly, claims 5–6 are also believed allowable for at least the same reasons as claim 1. Allowance of claim 5 is respectfully requested.

Claims 7–8 and 10 depend from claim 1, which is believed allowable. Accordingly, claims 7–8 and 10 are also believed allowable for at least the same reasons as claim 1. Allowance of claims 7–8 and 10 is respectfully requested.

Claim 12, as amended, recites in part “a client that ... is configured to collect performance data including performance metrics of a data transfer operation initiated by a network browser request”. The Office points to various sections of Haitsuka as purportedly disclosing the recited feature. However, none of those sections discloses or suggests collecting performance data, much less performance metrics of a data transfer. Particularly, the identifying information (about a web page) and resource locator strings (i.e., URLs) referenced by the Office in Haitsuka do not represent performance data or performance metrics. The Applicants stress that Haitsuka only monitors where the user is surfing, and does not disclose or suggest collecting performance data including performance metrics of a data transfer associated with such surfing. Furthermore, as previously discussed, Haitsuka only summarizes user feedback and responses to be delivered to the browsing application (Haitsuka, col. 6, lines 13–27 and col. 6, line 56 to col. 7, line 4), and does not summarize any performance-related information. Accordingly, Haitsuka fails to disclose or suggest all of the features recited in claim 12, and thus, fails to anticipate or make obvious the invention of claim 12. Allowance of claim 12 is respectfully requested.

Claim Rejections – 35 USC §103

Claims 3, 4, 9, and 11 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Haitsuka in view of U.S. Patent No. 6,839,680 to Lui et al (“Lui”). The Applicants traverse the rejection but have amended several of the claims to expedite allowance.

Claim 3 depends from claims 1 and 2, which are believed to be allowable. Therefore, claim 3 is believed to be allowable for at least the same reasons as claims 1 and 2. Furthermore, the Office admits that Haitsuka fails to disclose that the time interval is 15 minutes, and therefore points to Lui as disclosing this feature. However, Lui only discloses recording a log of a user's surfing activity (e.g., including the start time and end time of a web page visit, the URL visited, and the duration of the visit, etc.) and fails to disclose or suggest the monitoring or collecting of performance data and performance metrics of a data transfer. Moreover, the durations listed in Lui characterize the duration of a user's web page visit, not a time interval associated with monitored performance of a data access system. Accordingly, for at least the foregoing reasons, Haitsuka fails to anticipate or make obvious the invention of claim 3. Allowance of claim 3 is respectfully requested.

Claim 4 depends from claims 1, 2 and 3, which are believed to be allowable. Therefore, claim 4 is believed to be allowable for at least the same reasons as claims 1, 2 and 3. Furthermore, claim 4 recites in part performance data including "a timestamp identifying a time when the performance data was observed" (emphasis added). The Office admits that Haitsuka does not disclose this feature but points to various sections and figures in Lui. However, Lui merely discloses start and end times of a user's visit to a particular website (or idle time). Not only does Lui fail to disclose or suggest monitored performance data including performance metrics of a data transfer, the times disclosed in Lui do not pertain to when performance data of a data transfer was observed. As such, Lui fails to disclose this recited feature of claim 4.

Moreover, claim 4 also recites a collecting operation that comprises collecting the performance data that was observed during a specific time interval, which the Office admits is not disclosed in Haitsuka. In an effort to identify this feature in Lui, the Office points to sections in Lui. However, neither the sections cited by the Office nor any other text or figure in Lui provide any disclosure or suggestion of collecting the performance data that was observed during a specific time interval. Accordingly, Haitsuka and Lui fail

to anticipate or make obvious the invention of claim 4. Allowance of claim 4 is therefore respectfully requested.

Claims 9 and 11 depend from claim 1, which is believed to be allowable. Therefore, claims 9 and 11 are believed to be allowable for at least the same reasons as claim 1. Allowance of claims 9 and 11 is therefore respectfully requested.

Claims 13, 14, 16, 18–24, and 26–52 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over U.S. Patent No. 6,070,190 to Reps et al. (“Reps”) in view of U.S. Patent No. 6,438,592 to Killian. The Applicants traverse the rejection but have amended several of the claims to expedite allowance.

Reps discloses monitoring information relating to the performance of a server application program via an application probe. The monitored application programs are executing on a server and the application performance information is sent to a client computer for display and storage.

Claim 13, as amended, recites in part “a data gathering module that is adapted to collect performance data of data transfer operations ..., the performance data including at least communication data indicative of network performance statistics for data transfers and application data indicative of performance statistics of the network browser, the performance data being associated with individual web page object retrievals”. The Office points to Reps as purportedly disclosing a client application including such a data gathering module, presumably the AMA probe of Reps.

However, Reps is clearly devoted to monitoring server application performance and completely fails to disclose or suggest the gathering of performance data including network performance statistics for data transfers or application performance statistics of a network browser. Even the sections cited by the Office, which at best disclose the interaction between a client and a server and the monitoring of server application performance, fail to disclose or suggest gathering the two types of performance data recited in claim 13. The Office appears to suggest that the AMA probe of Reps represents a data gathering module, yet even the AMA probe (cited by the Office) is only

disclosed as gathering real-time information about a client-server based application program 203 – a program that is strictly executing on the server 202. Accordingly, Reps cannot be held to disclose or suggest collection of performance data of a network browser, as Reps only discloses monitoring server applications. Likewise, Reps fails to disclose gathering performance data including communication data indicative of network performance statistics for data transfers. No such performance data pertaining to data transfers are disclosed or suggested in Reps because Reps is devoted to monitoring server application performance from a client, not to monitoring network performance of a data transfer.

Therefore, the Applicants respectfully assert that Reps fails to disclose or suggest a data gather module in a client application that collects communications data indicative of network performance statistics for data transfers and application data indicative of performance statistics of the network browser.

The Applicants also assert that Reps fails to disclose or suggest the client application comprising an agent adapted to create preliminary summary data from at least the performance data for transmission to at least one server from the client application, as recited in claim 13. The Office points to “servers 104, fig. 1; col. 5, lines 38–42; col. 6, lines 1–5; col. 6, lines 19–31)” as purportedly disclosing the recited “agent” of claim 13; however, these sections of Reps merely describe a client application that generates and stores records about server application performance – there is no disclose or suggestion of summary data, particularly relating to the specific network browser and data transfer performance data recited in claim 13. Furthermore, as Reps is devoted to monitoring server application performance from a client, Reps fails to disclose or suggest creating preliminary summary data for transmission to at least one server from a client application.

Therefore, the Applicants respectfully assert that Reps fails to disclose or suggest an agent that is adapted to create preliminary summary data from at least the performance data for transmission to at least one server from the client application,

wherein the preliminary summary data includes summaries of at least the individual web page object retrievals from the at least one remote site

The Office admits that Reps fails to disclose capturing performance data associated with web page object retrievals. Accordingly, the Office points to Killian as purportedly disclosing this recited feature. Killian does disclose a server transmitting "performance monitoring instructions which instructs the client computer to send to the server a performance message indicating the length of time required on the client for performing (sic) an act associated with one or more of the transmitted data objects". Killian, col. 3, lines 36-40. However, the Applicant respectfully points out that the claim recites "wherein the preliminary summary data includes summaries of at least the individual web page object retrievals from the at least one remote site". Neither Reps nor Killian disclose summaries relating to individual web page object retrievals – no summarizing of such performance data is even suggested. Furthermore, Killian does not disclose or suggest the other recited features missing from Reps.

Accordingly, the Applicants respectfully assert that the combination of Reps and Killian fail to make obvious the invention recited in claim 13. Therefore, allowance of claim 13 is requested.

Claims 14-50 and 52 depend from claim 13, which is believed to be allowable. Therefore, claims 14-50 and 52 are believed to be allowable for at least the same reasons as claim 13. Allowance of claims 13-50 and 52 is therefore requested.

Claim 51 depends from claim 1, which is believed to be allowable. Therefore, claim 51 is believed to be allowable for at least the same reasons as claim 1. Allowance of claim 51 is therefore requested.

The Office appears to have made a typographical error in paragraph 41, which is stated to pertain to claim 50, but which appears to pertain to claim 52. The Applicants' response is based on the understanding that the rejection in paragraph 41 is directed to claim 52.

CONCLUSION

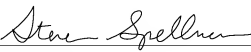
In view of all the foregoing, it is submitted that the pending claims of the present application are all in condition for allowance and such allowance is earnestly solicited. In the event that there are any outstanding matters remaining in the present application, the Office is invited to contact the undersigned to discuss the matters.

A three (3) month extension is hereby requested under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

Respectfully submitted,

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